IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 709 OF 2006
IN
NOTICE OF MOTION NO. 3247 OF 2006
IN
SUIT NO. 2423 OF 2006

M.D. Enterprises] .. Appellants
(Ori.Plaintiffs)

Versus

1. Kum Kum Kavita Coop.Hsg.Sty. & Anr.] .. Respondents
(Ori.Defendants)

Mr. Rajiv Narula i/b M/s. Jhangiani Narula & Associates for the appellants.

Ms. Sandhya Sreedharan for the respondent No.1.

Mr. R.A. Bamne for the respondent No.2.

CORAM: R.M. LODHA &
S.A. BOBDE, JJ.

DATED: 25TH SEPTEMBER, 2006

P.C. :

. Heard Mr. Rajiv Narula, the counsel for the appellant.

2. Clauses 1 and 6 of the Bank Guarantee dated 23rd September, 2005 reads thus:

> "1. We, Dena Bank Industrial Finance Branch do hereby undertake to pay on demand to KUM KUM KAVITA C0-OP. HSG. SOC. LTD. an amount not exceeding Rs.10,00,000/-

(Rupees Ten Lakhs only) if M/s. M.D. ENTERPRISES commits any breach of any of the terms and conditions contained in the Development Agreement dated 11.09.2000 executed with the KUM KUM KAVITA CO-OP. HSG. SOC. LTD.

2. .....
3. .....
4. .....
5. .....

6. This Bank guarantee is against the getting Occupation Certificate from Municipal Corporation of Greater Mumbai by M/s. M.D. ENTERPRISES."

3. The counsel for the appellant heavily relied on Clause 6 of the aforesaid Bank Guarantee and submitted that the Bank Guarantee was furnished by the appellant against obtaining the Occupation Certificate from the Municipal Corporation of Greater Mumbai. He submitted that Occupation Certificate was obtained within the time provided in the agreement. He thus submitted that there is no justification in the respondent No.1 (defendant No.1) enforcing the Bank Guarantee.

4. We considered the submissions made by Mr.Narula.

5. It may be noticed by us that all three Bank Guarantees are in the same terms as noted above.

6. The Occupation Certificate referred to by the counsel for the appellant shows that the appellant was required to furnish the Certificate under Section 270-A of the Mumbai Municipal Corporation Act within three months. Nothing has been shown to us that the appellant submitted the Certificate under Section 270-A to the Mumbai Municipal Corporation within three months. *Prima facie*, therefore, it cannot be said that the term of getting the Occupation Certificate has been complied with by the appellant.

5. In the circumstances, the order of the learned Motion Judge refusing to grant ad-interim relief does not call for any interference.

6. Appeal is dismissed in limine.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]